



House of Representatives
Committee on Public Safety

KEITH OAKLEY
CHAIRMAN
April 9, 1996

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OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF TEXAS
OPINION COMMITTEE
P.O. Box 12548
Austin, TX 78711-2548

Opinion Committee

Re: Request for Opinion Concerning Fire Fighter Entry Level Hiring Procedures in Civil Service Cities

The Honorable Attorney General Dan Morales:

I respectfully request that the Attorney General for the State of Texas render an opinion concerning an issue of concern in my capacity as Chairman of the House Committee on Public Safety. Specifically, the requirements of the Fire Fighter and Police Officer Civil Service Act, TEXAS LOCAL GOVERNMENT CODE Chapter 143, for filling entry level positions in fire departments covered by the Act. References below to statutory sections are to TEXAS LOCAL GOVERNMENT CODE Chapter 143 unless otherwise noted.

Section 143.023 of the Act sets forth eligibility criteria for beginning positions in covered fire departments. Section 143.024 requires a minimum of ten days notice of entrance examinations. Section 143.025(a) states:

The Commission shall provide for open, competitive, and free entrance examinations to provide eligibility lists for beginning positions in the fire and police departments. The examinations are open to each person who makes a proper application and meets the requirements prescribed by this chapter.

Section 143.025(b) requires the creation of an eligibility list based upon the results of the competitive examination, which examination must measure the applicant's qualifications "for fire fighting and work in the fire department." When a vacancy occurs in a beginning position, Section 143.026 requires the city's chief executive to appoint an applicant from among the top three names on the eligibility list. A person appointed from the list to fill a beginning position must serve a one year probationary period "beginning on that person's date of employment as a fire fighter, police officer, or academy trainee." Section 143.027.

The City of Austin previously has adopted and is covered by the Civil Service Act. However, the City has proposed to utilize a new hiring procedure quite different from the procedure it has used in the past. Under the City's new procedure, applications for beginning positions will be accepted year round. Applicants will submit a screening checklist which the City will use to ensure the applicants meet minimum standards set by the City concerning education and age. Candidates will then be required to

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pass a criminal history and driving records check, and a reading comprehension test which measures their ability to read at a tenth grade level. Applicants who successfully complete these requirements will be given a behavior-personnel assessment device (B-PAD) test. This is another pass/fail test which purports to measure the candidates' problem solving ability and interpersonal skills. Candidates who successfully pass the B-PAD test will be ranked in the order of their scores, given a conditional offer of employment, and made part of an applicant pool for beginning positions. Persons in this pool will then take the following pass/fail tests: physical ability test, background investigation, oral interview board, psychological exam, and medical/physical exam. Those persons in the pool successfully completing this winnowing process will remain in the applicant pool. Using a tie-breaker system, the City will select the "top" applicants from the remaining pool and give these top applicants a final offer of employment as a fire cadet. Those applicants accepting the offer will be enrolled in a six month Fire Academy class. At the end of the class, those persons attending the class, and only those persons, will be allowed to take the civil service entrance examination. The fire cadets successfully passing the civil service entrance examination will be assigned to stations. Their "start date: for purposes of the one year probationary period required by Section 143.027 is made retroactive to the date they began their training at the Fire Academy.

My question concerns whether the hiring process proposed for use by the Austin Fire Department complies with the requirements of the Civil Service Act. My primary concern relates to the entrance examination mandated by the Civil Service Act as the basis for selecting candidates for beginning positions. The City's system provides this entrance examination only to persons who have already been preselected to fill beginning positions in the Department, and provides the test to them only after they have served six months of their one year probationary period. This seems contrary to the requirements of Section 143.025 that entrance examinations be open to all persons meeting the requirements of the Act, and that the examination be the basis upon which persons are appointed as academy trainees to begin their one year probationary period. Section 143.027. I would appreciate your addressing the following question:

Does the Civil Service Act require use of the competitive entrance examination to select candidates for beginning positions in a covered fire or police department where the selectees will spend their initial employment as academy trainees?

I have enclosed with this request a written description of the City's proposed hiring process, together with a flow chart showing how the process would be used to select candidates for beginning positions. Please let me know if any additional information is needed by you in order to respond meaningfully to this opinion request.

Sincerely,



Keith Oakley, Chairman

HOUSE COMMITTEE ON PUBLIC SAFETY